REMARKS:

The claims in the current application were subjected to a restriction requirement. The non-elected claims (claims 1-16) have been canceled In affirmation of the election made during the February 12, 2004 phone call.

Claims 17, 18 and 19 were rejected under 35 U.S.C. §102 as being anticipated by Johnston, et. al. (5,642,549). Canceling the claims overcomes this rejection.

Claim 20 was rejected under 35 U.S.C. §112 for being indefinite concerning the phrase "total energy". The amendment overcomes the objection by clarifying that the total energy absorbed is the total energy absorbed before failure. Support for this is in the original specification at page 7. Additionally noted, claim 20, as amended, becomes an independent claim and not subject to the anticipation rejection of claims 17, 18, and 19 from which claim 20 previously depended.

Claim 20, as amended, contains a new lower limit for the amount of energy absorbed before failure. Support the value of 0.31 can be found on page 9, Table III, example 4 of the specification.

Claim 20 was also rejected under 35 U.S.C. §102(b) as being anticipated by Johnston, et. al., in that Johnston, et. al. is surmised to inherently disclose the same limitations. A comparison of examples 1-6 of the specification with examples 52193-1 through 52193-5 in table 4, column 12 of Johnston, et. al., demonstrates that the similar sized container in Johnston, et. al., does not have the same total energy absorbed relationship. In Johnston, et. al., the load for the same thickness trays stays flat or declines with decreasing density from 19.45 at .9023 g/cc to 14.86 and **decreases** with increasing thickness. The exact opposite is true for the invention of claim 20. Example 6 is prepared as Johnston, et. al., but at 0.4 g/cc and 25 mils. The maximum load of Example 6 is 14 lbs. However, inapposite to Johnston, et. al, the maximum load **increases** as the total energy absorbed before failure increases. If the relationship of Johnston, et. al., were valid for the objects of the present invention, the maximum load should stay constant or decline as the cells get bigger (density declines).

Claim 21 introduces the limitation that the thermoplastic article contain 0.34 percent by weight water. Support for this limitation is found on page 8, Table I, example 4. Johnston, et. al, does not disclose a thermoplastic tray that contains water.

Claim 22 limits claim 20 by requiring that the cells contain water and inert gas. Support for this is found at page 5 line 22, which states that the initial sheet was foamed using an inert gas. The sheet was conditioned to equilibrium with moisture at page 5, line 28-31. By reaching equilibrium both the tray and the cell void must contain moisture. The moisture expands the cell far beyond what can be done with the amount of inert gas in the sheet alone. Examples 5 and 6 use the exclusively inert gas expansion mechanism as described in Johnston, et. al. Johnston's exclusive reliance on the inert gas for expansion is found at Claim 1, column 12, line 50 (sufficient bubbles of inert gas). Examples 5 and 6 of the current application demonstrate that there is little expansion when the expansion is done exclusively with inert gas. The limited expansion upon thermoforming of example 5 and 6 is consistent with the limited expansion (small decrease in density) noted in Johnston, et. al.'s examples in Table III, column 11. Had moisture been present in Johnston's trays, the expansion would have been much greater. The moisture limitation distinctly sets the claimed article from the articles disclosed in Johnston, et. al.

Claim 23 has all limitations of claims 20, 21 and 22. As such, the previous arguments apply, and Johnston clearly does not set forth a tray that absorbs at least 0.31 Joules of energy before failure and contains at least 0.34 weight percent water where water is present in the bubbles with the inert gas.

Claims 24 – 27 introduce that the thermoplastic be polyethylene terephthalate and then subject to the repeated limitations of claims 20-23. Support for the limitation that the thermoplastic be polyethylene terephthalate can be found at page 1, line 9 and throughout the document. The arguments for claims 24-27 regarding total energy absorbed, weight percent water and water in the bubbles are the same as those set forth for claims 20-23.

For the reasons delineated herein, the claims pending in the subject patent application are not obvious over the teachings of the cited reference. It is now accordingly appropriate to allow the subject patent application and such an allowance is respectfully requested.

Respectfully submitted,

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